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DESIGNATION OF THE BAHAMAS AS A BENEFICIARY COUNTRY UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

NOTIFICATION OF HIS INTENTION TO DESIGNATE THE BAHAMAS AS A "BENEFICIARY COUNTRY" FOR PURPOSES OF GRANTING DUTY-FREE TREATMENT, PURSUANT TO PUBLIC LAW 98-67, SECTION 212(a)(1)(A)

MARCH 19, 1985.—Referred to the Committee on Ways and Means and ordered to be printed

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THE WHITE HOUSE,
Washington, March 14, 1985.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 212 of the Caribbean Basin Economic Recovery Act (CBERA), I wish to inform you of my intent to designate the Bahamas as a beneficiary of the trade-liberalizing measures provided for in this Act. Designation will entitle the products of the Bahamas to duty-free treatment until September 30, 1995, except for products statutorily excluded. As a beneficiary, this country will have the opportunity to become eligible for the convention expense tax deduction under Section 274(h) and to become an eligible domicile for the establishment of foreign sales corporations under Section 927(e)(3)(A) of the Internal Revenue Code of 1954, by entering into an exchange of information agreement with the United States on tax matters.

Designation is an important step for the Bahamas in its effort to strengthen its economy. Designation is also significant because it is further tangible evidence of the constructive cooperation between the United States and the peoples and governments of the Caribbean Basin.

My decision to designate the Bahamas flows out of discussions held between this Administration and that nation regarding the designation criteria set forth in Section 212 of the CBERA. Our discussions with the Bahamas were concluded this past month.

The Bahamas have demonstrated to my satisfaction that its laws, practices, and policies are in conformity with the designation criteria of the CBERA. The government of the Bahamas has communicated on these matters by letter with Secretary of State Shultz and Ambassador Brock and in so doing has indicated its desire to be designated as a beneficiary (copies of the letters are enclosed). On the basis of the statements and assurances in this letter, and taking into account information developed by the United States Embassy and through other sources, I have concluded that the objectives of the Administration and the Congress with respect to the statutory designation criteria of the CBERA have been met.

I am mindful that under Section 213(B)(2) of the CBERA, I retain the authority to suspend or withdraw CBERA benefits from any designated beneficiary country if a beneficiary's laws, policies, or practices are no longer in conformity with the designation criteria. The United States will keep abreast of developments in the Bahamas and other beneficiary countries and entities which are pertinent to the designation criteria.

This Administration has been and will continue to work closely with its fellow governments in the Caribbean Basin and with the private sectors of the United States and the Basin countries to

ensure that the wide-ranging opportunities opened by the CBERA are fully utilized.

Sincerely,

RONALD REAGAN.

MINISTRY OF FOREIGN AFFAIRS,
Nassau, Bahamas, July 16, 1984.

Hon. GEORGE SHULTZ,
Secretary of State,
Department of State, Washington, DC.

DEAR MR. SECRETARY:

APPLICATION BY THE BAHAMAS FOR DESIGNATION AS A "BENEFICIARY COUNTRY" UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

I have the honour on behalf of The Government of The Commonwealth of The Bahamas to convey to the Government of the United States of America pursuant to Section 212 of the Caribbean Basin Economic Recovery Act, the request of The Government of The Bahamas to be designated a "beneficiary country" under the provisions of Section 212 of the said Act.

The Government of The Bahamas believes that participation in the trade component of the Caribbean Basin Initiative programme would generate new employment opportunities for Bahamians through the expansion of our industrial and commercial sectors over the twelve (12) years of this programme.

We have examined the criteria of Section 212 of the Caribbean Basin Economic Recovery Act and believe that for the following reasons the Government of The Bahamas has satisfied the criteria for designation as a "beneficiary country".

JUSTIFICATION UNDER THE MANDATORY PROVISIONS

212(b)(1): The Bahamas, as proclaimed in the Preamble to its Constitution is a "Free and Democratic Sovereign Nation founded on Spiritual Values and in which no Man, Woman or Child shall ever be slave or bondsman to anyone or their labour exploited or their lives frustrated by deprivation etc." Representative Government has existed uninterruptedly in The Bahamas since 1729.

212(b)(2)(A): The Government of The Bahamas does not utilize as a policy option the nationalization, expropriation, seizure or confiscation of private property. Section 27 of The Bahamas Constitution sets down the conditions and circumstances under which property may be taken and the procedures for making prompt and adequate compensation. Conditions to be satisfied are:

> "(a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit or the economic well-being of the community; and
>
> "(b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to

any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the making of prompt and adequate compensation in the circumstances; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

"(d) any party to proceedings in the Supreme Court relating to such a claim is given by law the same rights of appeal as are accorded generally to parties to civil proceedings in that court sitting as a court of original jurisdiction".

The Immovable Properties (Acquisition of Foreign Persons) Act, 1981, came into force on 1 November, 1983. Its provisions are not retroactive and it will only affect purchases made after 1 November, 1983. The Bahamas is reviewing an agreement with the Overseas Private Investment Corporation (OPIC) which would provide further assurances for U.S. investors who choose The Bahamas as the location for their investment. Consideration is also being given to The Bahamas becoming a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID).

212(b)(2)(B): No steps have been taken by The Government to repudiate or nullify any existing contract or agreement, relating to patent, trademark or other intellectural property owned by any citizen or body corporate of the United States.

212(b)(2)(C): No taxes or other punitive measures have ever been levied against property owned by citizens or bodies corporate of any foreign country including the United States. American citizens are treated no differently from other foreign nationals in the administration of such statutory taxes or levies against property owned by individual citizens or bodies corporate.

If any property is acquired in the public interest under the Acquisition of Land Act, the appropriate compensation must be paid to the owner.

212(b)(3): The Bahamas has always acted in good faith and has abided by the decision of the court or appropriate arbitral body in recognizing as binding or in enforcing arbitral awards on behalf of U.S. citizens or corporations. In addition, The Bahamas is a party to the Convention on the Execution of Foreign Arbitral Awards, Done at Geneva, 26 September, 1927.

212(b)(4): The Bahamas does not grant nor does it intend to grant preferential treatment to the products of any developed country which are imported into The Bahamas.

212(b)(5): The Broadcasting Corporation of The Bahamas nor any other entity owned or controlled by the Government of The Bahamas is engaged in or will engage in the broadcast of any materials, including films or television materials belonging to United States

Copyright holders without their express consent. The Broadcasting Corporation of The Bahamas has contractural arrangements with certain U.S. Corporations permitting the use of copyrighted audio/visual material in its broadcasts. All copyright infringements which were brought to the attention of The Bahamas Broadcasting Corporation have been settled and should any others occur, they will be resolved through negotiation and the legal process and fair and adequate compensation, if necessary will be paid.

212(b)(6): The importation, exportation, manufacture, sale and use of dangerous drugs are regulated in The Bahamas by the Dangerous Drugs Act (Chapter 223) and its amendments. The Bahamas is also a party to several international Conventions dealing with dangerous drugs including the Single Convention on Narcotic Drugs, 1961. The Bahamas is not a drug producing country but suffers the problems of a transit state through which drugs move from South America to the United States. Over the years and particularly since 1973, The Government of The Bahamas has co-operated closely with the Government of the United States in efforts to prevent narcotic drugs and other controlled substances from entering the United States illegally. More recently as a supplement to President Reagan's Florida Task Force against drugs, The Bahamas agreed to a special joint operation between law enforcement personnel in The Bahamas and United States personnel using a helicopter stationed in Nassau to help stem the illegal flow of drugs to the United States of America.

212(b)(7): Since 1931, The Bahamas has maintained in force a Treaty of Extradition with the United States. It is to be noted that conspiracy in drug crimes is an extraditable crime under the existing Treaty and this has been the case since 1962 contrary to the understanding of the Justice Department of the United States. The Government of The Bahamas is at present giving consideration to the updating of the present Extradition Treaties with relevant countries.

JUSTIFICATION FOR THE DISCRETIONARY PROVISIONS

For the following reasons the Government of The Bahamas believes that it is observing policies and practices which are in conformity with the designation criteria listed in Section 212(c) of the Caribbean Basin Economic Recovery Act.

212(c)(1): The submission of this letter and the response to each criterion is an expression by The Commonwealth of The Bahamas of its desire to be designated a "beneficiary country" under Sub-Title A.

212(c)(2): We believe that improved opportunities for two-way trade with the United States will enable the expansion of industrial operations and the stimulation of employment opportunities particularly in the scattered Family Islands of The Commonwealth.

Traditional economic indicators such as per capita income and the cost of living index do not provide an accurate description of prevailing economic conditions in The Bahamas outside its two major urban centers of Nassau and Freeport. The islands of The Bahamas are scattered across seventy thousand nautical miles encompassing thousands of acres of undeveloped land surrounding

small rural Family Island settlements where the mainstay of the citizens is subsistence farming and fishing. It is the intention of the Government of The Bahamas to explore avenues to provide a better way of life for the people and further industrial development of the country.

212(c)(3): While the Government of The Bahamas became a member of the Caribbean Community (CARICOM) in July 1983, it is not a member of the Common Market and is not obligated nor does it grant preferential market access to other (CARICOM) members. The Government of The Bahamas maintains an open non-discriminatory trading regime.

The trade regime of The Bahamas is based on a system of protecting infant industries. This is achieved principally through the Industries Encouragement Act, 1970.

The Government of The Bahamas assures the United States that it will provide equitable and reasonable access to its markets and basic commodity resources.

212(c)(4): The Bahamas was granted de facto membership under the General Agreements of Tariffs and Trade (GATT) since 1973 and will make the necessary arrangements to ensure that this status continues. We therefore foresee no difficulties in honouring all applicable trade agreements which might be approved under Section 2(a) of the Trade Agreement Act of 1979.

212(c)(5): The Bahamas does not use export subsidies nor regulate export performance requirements or local content requirements which distort international trade. Through the provisions of the Industries Encouragement Act, 1970 "approved manufacturers manufacturing an approved product" shall enjoy relief from Customs duties, export tax, income tax, real property tax for a period of 15 years.

When fiscal incentives are granted, The Bahamas Government will, in co-operation with the United States Government, review its trade promotion policies and practices, if necessary, with the objective of ensuring that these do not distort international trade. The Government of The Bahamas agrees to consult with the United States Government if the United States Government believes that any trade practices of the Government of The Bahamas have a trade distorting impact.

212(c)(6): The Bahamas recently became a member of the Organization of American States (OAS) and the Caribbean Community (CARICOM). The Bahamas is also a member of the Caribbean Development Bank and other regional agencies. We believe that the situation of The Bahamas, as a consuming nation, will attract market activity among its partners and thereby foster an expansion of trade conducive both to the revitalization of the region, and the strengthening of its institutions.

212(c)(7): The Bahamas has undertaken several self-help measures to promote its own development and economic diversification. Incentives to attract additional investment and facilitate that objective, have been provided by legislation.

(i) The Hotels Encouragement Act, Chapter 5;

(ii) Certain concessions under the Tariff Act;

(iii) The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, Chapter 235;

(iv) The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) Act, Chapter 236;

(v) The Bahamas Development Bank Act;

(vi) The Industries Encouragement Act;

(vii) The Bahamas Industrial and Agricultural Corporation Act;

(viii) The Free Trade Zone Legislation soon to be introduced;

(ix) Inter-American Development Bank Act;

(x) The International Monetary Fund Act;

(xi) The Caribbean Development Bank Act.

212(c)(8): Workers in The Commonwealth of The Bahamas are afforded reasonable conditions of work and enjoy the right to organize and bargain collectively under the Industrial Relations Act, 1970 as amended in 1979 and 1981. Section (24) of the Constitution of The Bahamas assures all workers of their freedom to assemble and associate for the protection of their collective interests. Trade Unions are very strong in The Bahamas and there is adequate legislation to cover them.

The Bahamas has also ratified twenty-six of the International Labour Organization's (ILO) Conventions.

212(c)(9): The Bahamas has adequate legislation to ensure, exercise and enforce the rights in intellectual property including Patent, (copyright rights and trademarks). The respective legislation is:

(i) The Copyright Act;

(ii) The Trademarks Act;

(iii) The Industrial Property Act, 1965.

In addition, The Bahamas is a party to the Paris Convention of 1883 for the Protection of Industrial Property and the Berne Convention of 1886 for the Protection of Literary and Artistic Works.

212(c)(10): The use of copyright material in The Bahamas in breach of that copyright renders the user liable to civil claims. Further, where such breach arises in the case of acts of trading criminal sanctions are available. Part III of that Act sets out remedies which citizens or bodies corporate of the United States might pursue to redress any infringement of their copyright within The Bahamas. The Government of The Bahamas is prepared to co-operate with the Government of the United States in facilitating negotiations among the appropriate parties in order to reach agreements providing consent for the use of copyright material.

212(c)(11): The Government of The Bahamas wishes to assure the Government of the United States of its co-operation in the administration of the provisions of Sub-Title A. for Duty-Free Treatment, under the Caribbean Basin Economic Recovery Act of 1983.

The Government of The Bahamas understands that the Caribbean Basin Economic Recovery Act recognizes the authority of the President of the United States to withdraw or suspend the beneficiary status of previously designated countries. The Government of The Bahamas agrees to notify the United States in the event of changes in any of the policies or practices discussed above which might prove to be inconsistent with any of the designation criterion of the U.S. law. The Government of The Bahamas would be pre-

pared to consult with the United States, upon request concerning such changes.

The Bahamas has always enjoyed a friendly relationship with the Government of the United States of America. It is hoped that this friendly relationship between our two nations will continue and our continued efforts will be used to fight those forces which tend to disrupt the peaceful co-existence of all states. It is our view that the provisions of the Caribbean Basin Economic Recovery Act affords an opportunity for improved economic and industrial development which will be beneficial to both countries.

Please accept, Mr. Secretary, the assurances of my highest consideration.

P.L. ADDERLEY,
Minister of Foreign Affairs
and Attorney General.

MINISTRY OF FOREIGN AFFAIRS,
Nassau, Bahamas, July 16, 1984.

His Excellency Mr. WILLIAM E. BROCK,
U.S. Trade Representative,
Washington, DC.

DEAR MR. AMBASSADOR:

APPLICATION BY THE BAHAMAS FOR DESIGNATION AS A "BENEFICIARY COUNTRY" UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

I have the honour on behalf of The Government of The Commonwealth of The Bahamas to convey to the Government of the United States of America pursuant to Section 212 of the Caribbean Basin Economic Recovery Act, the request of The Government of The Bahamas to be designated a "beneficiary country" under the provisions of Section 212 of the said Act.

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We have examined the criteria of Section 212 of the Caribbean Basin Economic Recovery Act and believe that for the following reasons the Government of The Bahamas has satisfied the criteria for designation as a "beneficiary country".

JUSTIFICATION UNDER THE MANDATORY PROVISIONS

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may be taken and the procedures for making prompt and adequate compensation. Conditions to be satisfied are:

"(a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit or the economic well-being of the community; and

"(b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the making of prompt and adequate compensation in the circumstances; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

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tration of the provisions of Sub-Title A. for Duty-Free Treatment, under the Caribbean Basin Economic Recovery Act of 1983.

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The Bahamas has always enjoyed a friendly relationship with the Government of the United States of America. It is hoped that this friendly relationship between our two nations will continue and our continued efforts will be used to fight those forces which tend to disrupt the peaceful co-existence of all states. It is our view that the provisions of the Caribbean Basin Economic Recovery Act afford an opportunity for improved economic and industrial development which will be beneficial to both countries.

Please accept, Mr. Secretary, the assurances of my highest consideration.

P.L. ADDERLEY,
Minister of Foreign Affairs
and Attorney General.

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